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Total Number of Pages in This Submission

23

Application Number	09/964,000
Filing Date	09/26/2001
First Named Inventor	Guess, William Y
Art Unit	1761
Examiner Name	Becker, Drew E.
Attorney Docket Number	

ENCLOSURES (Check all that apply)

<input checked="" type="checkbox"/> Fee Transmittal Form <input checked="" type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
<div>Remarks</div> <div>ED 977259391US</div>		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name			
Signature	<i>William Y Guess</i>		
Printed name	William Y. Guess		
Date	08/05/2005	Reg. No.	

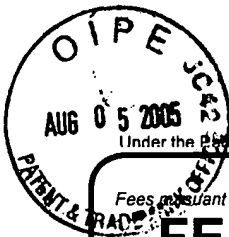
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Signature	<i>William Y Guess</i>		
Typed or printed name	William Y. Guess	Date	August 5, 2005

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Effective on 12/08/2004.

Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

FEE TRANSMITTAL
For FY 2005☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 250

Complete if Known

Application Number	09/964,000
Filing Date	09/26/2001
First Named Inventor	Guess, William Y
Examiner Name	Becker, Drew E.
Art Unit	1761
Attorney Docket No.	

METHOD OF PAYMENT (check all that apply)☒ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____☐ Deposit Account Deposit Account Number: _____ Deposit Account Name: _____

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☐ Charge fee(s) indicated below☐ Charge fee(s) indicated below, **except for the filing fee**☐ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17☐ Credit any overpayments**WARNING:** Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**FEE CALCULATION****1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES**Fee Description**

Each claim over 20 (including Reissues)

Small Entity

Fee (\$)

Fee (\$)

Each independent claim over 3 (including Reissues)

50 25

Multiple dependent claims

200 100

360 180

Total Claims **Extra Claims** **Fee (\$)** **Fee Paid (\$)****Multiple Dependent Claims**

- 20 or HP = _____ x _____ = _____

Fee (\$) **Fee Paid (\$)**

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims **Extra Claims** **Fee (\$)** **Fee Paid (\$)**

- 3 or HP = _____ x _____ = _____

HP = highest number of independent claims paid for, if greater than 3.

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
_____ - 100 = _____	_____	_____ / 50 = _____ (round up to a whole number) x _____	_____	_____

4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Fees Paid (\$)

Other (e.g., late filing surcharge): Appeal Brief fee

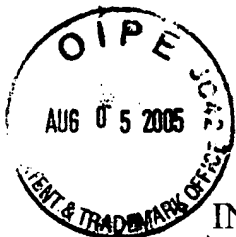
250

SUBMITTED BY

Signature	<i>William Y. Guess</i>	Registration No. (Attorney/Agent)	Telephone 225-927-5610
Name (Print/Type)	William Y. Guess		Date August 5, 2005

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 09/964,000 Confirmation No. 3019
Applicant : William Y. Guess
Filed : 09/26/2001
TC/A.U. : 1761
Examiner : Becker, Drew

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Appeal Brief

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Va 22313-1450

Sir:

Applicant respectfully submits the following Appeal Brief in accordance with 37 C.F.R. 41.27 together with the fee set for in 37 C.F.R. 41.20(b). This appeal is from the final Office Action mailed April 4, 2005.

I. REAL PARTY IN INTEREST.

The real party in interest is the appellant, William Y. Guess.

II. RELATED APPEALS AND INTERFERENCES.

There are presently no appeals or interferences known to the appellant.

III. STATUS OF CLAIMS.

Claims 1 through 21 (cancelled)

Claims 22 through 46 stand rejected and are appealed herewith.

IV. STATUS OF AMENDMENTS.

No amendments have been filed subsequent to the final office action.

V. SUMMARY OF CLAIMED SUBJECT MATTER.

The invention described in the instant application relates to a coaxially combined meat roast in which a tenderloin is disposed along the longitudinal axis of the corresponding top loin thereof. These muscle based meats are taken from a bisected short loin. The short loin is that part of the carcass of a food animal between the hips and the ribs. The tenderloin consists of three muscles, the most prominent being the psoas major. A beef filet mignon consists of only the psoas major after having the psoas minor removed. The psoas minor is often called the "chain" because of the resemblance thereto. The top loin is comprised of almost entirely of the muscle longissimus dorsi. When sliced into steaks the longissimus dorsi of beef is commonly called a New York or Kansas City Strip or simply a strip steak.

When the short loin is sliced with the bone in, these steaks are referred to as T Bone or Porterhouse steaks with beef and loin chops if not beef.

Still referring to the coaxially combined roast the description teaches a method of wrapping the tenderloin, prior to insertion, with blanched greens in order to highlight the boundary between the constituent parts. Diners are known to appreciate these type concentric arrangements with sushi, various deserts and the like. Appellant claims this element as a “means for highlighting” the boundary between the inner and outer constituent as allowed by the sixth paragraph of Section 112 of Title 35.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL.

A. Whether the specification of the instant application fails to satisfy the written description requirement required by 35 USC § 112, first paragraph, with regards to any of the appealed claims.

B. Whether claims 22-31 fail to distinctly and particularly claim the subject matter as required by 35 USC § 112, second paragraph.

C. Whether claims 22-23, 30-31, 40-41, and 44-45 lack novelty as required by 35 USC § 102 (b) due to U.S. # 3,615,692 issued to Lovell.

- D. Whether claims 22, 24, 30-31, 40-41 and 44-45 lack novelty as required by 35 USC § 102 (e) due to U.S. patent # 6,599,545 issued to Holbrook.
- E. Whether claims 22,24, 30, 41-45 lack novelty as required by 35 USC § 102 (e) due to U.S. patent # 6,582,741 issued to Haig.
- F. Whether claims 22,24, 30, 40-41, and 44-45 are unobvious pursuant to 35 USC § 103 (a) over Haig in view of U.S. patent # 6,117,467 issued to Huling.
- G. Whether claims 26-29 and 42-43 are unobvious pursuant to 35 USC § 103 (a) over Haig, in view of Huling, in further view of Applicant's Admitted Prior Art.
- H. Whether claims 23 and 25 are unobvious pursuant to 35 USC § 103 (a) over Haig, in view of Huling in further view of Guiliana Bugialli's Techniques of Italian Cooking.
- I. Whether claims 32-34 are unobvious pursuant to 35 USC § 103 (a) over Haig in view of U.S. patent # 1,807,189 issued to Bemis.
- J. Whether claims 37-39 and 46 are unobvious pursuant to 35 USC § 103 (a) over Haig, in view of Huling and further in view of Bemis.

VII. ARGUMENT

The written description requirement¹ rejections.

The examiner has not presented, much less established, a *prima facie* case toward any of appellant's claims regarding the written description requirement of Section 112, which must be approached by a case by case analysis. No evidentiary analysis is provided in the final office action toward any of these rejections.

Regarding claims 22 in which the edible filling is said to be comprised of "an animal tissue elongate having a dominant proportion of water and protein respectively". From the standard reference: The Meat We Eat: "Lean muscle consists of approximately 20% protein, 70% water, 9% fat, and 1% ash."²

Claim 27 which depends from claim 22 further limits the edible filling to a tenderloin, this is wholly consistent with the originally filed claims. If a food animal tenderloin did not contain a dominant proportion of water and protein, only a Section 112 second paragraph rejection would be in order as this language would not narrow the independent claim from which it depends. This should only magnify the error of the WDR rejection regarding Claim 22 as well as the other WDR rejections by reading them from bottom to top, from

¹ Also referred to as the WDR

² The Meat We Eat, eleventh edition. 1977, The Interstate Printers & Publishers, Inc Danville, Illinois, page 627. This book is commonly referred to as the meat science "Bible" and remains in print today (14th edition).

the dependent claims to the independent. Most of the dependent claims are completely consistent with the originally filed claims to which they most resemble.

The description clearly and reasonably shows possession at the time of the filing toward Claim 30 with regard to the WDR.

Claim 30 states that the second animal tissue elongate has a weight at least 7% as that of the outer tubular perform which is described in the specification as a top loin and the second animal tissue elongate as the associated tenderloin thereof.

Knives and scales are indispensable equipment for butchers. Possession of the claimed subject matter at the time of the filing would be absolute and irrefutable to skilled butchers. The tenderloin of a typical four legged, fur bearing food animal is roughly 50% the weight of the respective top loin thereof when both are taken from a short loin. Appellant is prepared to provide published proof in response to any answer to the contrary with regard to these relative weights.

Also, for the reasons stated above, the rejection of dependent claim 35 is error.

Rejection of those claims including the language “means for highlighting” is error.

The examiner has not presented nor established a *prima facie* case regarding failure of the instant application to satisfy the written description requirement of Section 112 first paragraph toward any claims containing the language, “means for highlighting”. The description, drawings and color photographs entered and accepted by petition and fee, clearly show possession of the claimed subject matter described at the time of filing.

Regarding the “non-pork” language of Claim 40 lacking a written description in the specification.

Appellant’s description is not specifically limited to pork meat and only if it were, would this rejection be proper. The specification describes the problems associated with lamb and beef short loins. The color photographs do not show sliced sections of coaxially combined pork, they do show those of lamb and beef, and while these photographs were added subsequent to the filing of the description they contain no new matter. The animal carcass shown in profile in appellant’s drawing is that of a lamb and not that of a pig and no skilled butcher would ever confuse the two. The WDR rejections of Claim 40 and those depending therefrom are error.

Claims 42 and 43 have been rejected as not being described in the specification sufficient to satisfy the WDR. Claim 42 states that both animal tissue elongates are comprised of longissimus dorsi and Claim 43 states that both animal tissue elongates are comprised of psoas major. This language is

consistent with appellant's disclosure. In the second paragraph under the heading "Additional Embodiments" may be found the following:

Another alternate embodiment of the present invention is shown in FIGS. 11 and 12. FIG. 11 shows the narrowing end portion 26 of a food muscle such as the hip or chuck end of a longissimus dorsi or the lumbar end of a psoas major, the tip end thereof 28 having been removed and crust frozen, enrobed with vegetable material 18 and lubricated with an edible lubricant. Shown in FIG. 12 the narrowing shortened end portion 27 having been incised with a v-shaped slit-like aperture in which the crust frozen, enrobed and lubricated tip 28 has been inserted therinto. It may be preferable to secure the coaxial section of this alternate embodiment with a skewer.

Regarding Claims 22 being indefinite pursuant to 35 U.S.C. 112 second paragraph.

The language of claim 22 is clear and distinct and particularly points out the common knowledge that meat is comprised of substantially 70 percent water and 20 percent protein respectively, a dominant proportion by any measure. Animal fat tissue, such as pork fat back which consists primarily of fatty acids, and especially cured fat products such as salt pork, have 25 or less percentage of water and very, very little protein. Larded beef, an almost extinct product, contains multiple strips of fat along the longitudinal interior, when viewed in light of larded beef, appellant's claim is done so with clear particularity. This rejection is error.

Claims 24 and 31 are distinct.

The instant application teaches, *inter alia*, wrapping red meat with a green leafy material, then inserting same into the interior of another red meat elongate. The green leaf highlights the boundary thereinbetween. The examiner states with regards to “means for highlighting” the boundary, “It is not clear what component this refers to.” Appellant does not believe the artesian, nor would the public, have any problem ascertaining the distinction of this component of the coaxially combined meat item with regards to claim 31 and those which include this limitation. Transitioning from the core meat to the outer meat absent the leafy wrap does not perform the claimed “means for highlighting” function, regardless of the examiners comments that they do. Sushi rolls commonly use nori, a jet black seaweed analog sheet and sticky white rice along with various other components in their construction. Most often the nori is laid onto a bamboo mat, the rice placed thereon and other fillings placed onto the leading edge of the rice, the whole is rolled up. Occasionally, in order to provide a change of pace for the diner, the rice is spread first on the bamboo mat, then the nori, then the various fillings. When sliced transversely the nori ring highlights the boundary between the rice and the, for example, ersatz snow crab meat, avocado, or whatever. And while the diner’s close inspection could ascertain the transition, and even the boundary, between these food stuffs absent the nori ring, the result would not be nearly as dramatic. These rejections are error.

With regard to claims 22-23, 30-31, 35-36, 40-41, and 44-45 being anticipated by the Lovell disclosure.

Appellant respectfully disagrees. The Lovell patent does not disclose an animal tissue elongate disposed within the de-boned chicken leg quarter. It shows and

teaches viscous stuffing and nothing else. Also the transition from the stuffing to the outer chicken leg does not perform the function as recited in those claims of the appellant's that provide a "means for highlighting" limitation.

The respective weight relationships between the stuffing and the leg quarter meat as shown by the Lovell disclosure's drawing figures would be irrelevant toward anticipation, as the stuffing would not be equivalent to, nor be read on by applicants coaxially centered animal tissue elongate limitation.

The Lovell disclosure teaches a method for the removal of the leg and thigh bones of a poultry leg quarter and then stuffing the cavity produced thereby with "viscous material". It is neither described nor suggested within the Lovell disclosure that an animal tissue elongate be substituted for the viscous stuffing. And while the transition between the leg tissues and the viscous stuffing would be discernable, again, this transition would not perform the function of the presently asserted "highlighting" means-plus-function claim element in and of itself. Each and every element of the asserted claims must be present in the single prior art disclosure in order to anticipate a claim. Appellant does not find anticipation with regard to the Lovell disclosure as it relates to any of appellant's claims. These rejections are error.

Claims 22, 24 and 30-31, 40-41 and 44-45 have been rejected as being anticipated by U.S. 6,599,545 issued to Holbrook.

Appellant respectfully disagrees. In order to anticipate any claim, each and every claim limitation must be found in a single prior art reference. Such is not the

case with the Holbrook patent. There is not shown, taught or suggested a tubular preform comprised of meat within the Holbrook disclosure. The Holbrook disclosure teaches the coring of a loaf of bread and inserting arcuately arranged sandwich fixings thereinto. Appellant is unaware of any device or method for “coring” a meat elongate. However, if such a device were known, this could provide an excellent way to produce appellant’s claimed subject matter, by: coring a meat elongate such as a length of beef rib eye, removing the central plug from whatever device used, then returning this plug to the original location thereof. These 102 rejections are error.

Claim 31 and 35-36 have been rejected as being anticipated by U.S. 6,582,741 issued to Haig.

The Haig disclosure teaches a device and method for incising a pork loin along the longitudinal axis thereof and inserting a viscous mass by use of a tube incased ram. Nowhere in the Haig disclosure is there any teaching or suggestion that an animal tissue elongate be inserted by this device or method into the incised pork loin. With regard to Claim 31, Haig teaches a two part food item, a filling and an outer solid meat tubular perform therearound, as with claim 31. Claim 31 adds the limitation “means for highlighting” the boundary between these elements. There is art of record that teaches a three part coaxial meat item. Citation AD which was part of the original non provisional filing contains this, inherent three part coaxial meat item. This non patent prior art by the National Pork Board teaches inserting a link sausage into and along the longitudinal axis of a pork loin. Link sausage is a meat stuffing within a tubular preform namely, sausage casing.

However sausage casing would not perform the “means for highlighting” function of Claim 31 in that sausage casing is very thin and virtually transparent. Nothing demonstrates the transparency of sausage casing quite like the sight of a platter holding both *boudin blanc* and *boudin noir*³. *Boudin blanc*, typically made from veal or chicken and pure white fat, is usually as white as vanilla ice cream, and *boudin noir* (made mostly from beef, lamb or pork blood) is often nearly as black as tar. Both sausages are made using the same casing material.

Claims 22, 24, and 30 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Haig in view of Huling.

Patents issued to Haig (U.S. 6,582,741) and Huling (U.S. 6,117,467) teach similar devices namely a plunger system for stuffing viscous material into pork loins, with the Haig disclosure and various edibles with the Huling disclosure. Combined, these disclosures do not teach, disclose or suggest, nor is there present, when combined, the subject matter of appellant’s asserted claims. Nowhere in either of these disclosures is there taught or suggested that an animal tissue elongate be inserted into a tubular preform comprised of meat. The material to be stuffed regarding the Huling disclosure is vague. For instance in line 25 under the paragraph headed by “Related Art” the following passage appears:

³ <http://pageperso.aol.fr/pigachoux/page18.html> The bottom of this web page shows a nice photo of both these French sausages.

Other materials may also be used for stuffing, such as vegetables (onions, garlic and the like), And other meats (sausage mix stuffed into a roast, or crawfish or crab meat stuffed into other meats).

The Huling disclosure does not teach, disclose, or suggest that lengths of animal tissue be used to fill the available incision no more than it teaches or suggests that whole, raw, unpeeled onions be loaded into the device and stuffed into a meat item, despite the vague language. The words vegetables and meats are used to indicate the type of material used in viscous stuffing; nothing else is taught nor suggested. Also the drawings of the Huling disclosure bear this out. The Huling disclosure does not repair the deficiencies of the Haig disclosure's teachings with regard to applicants above asserted claims. These rejections are error.

Claims 26-29 and 42-43 have been rejected under 35 U.S.C. 103 (a) as being unpatentable over Haig, in view of Holbrook, and further in view of applicants admitted prior art.

The Haig disclosure does not show, teach or suggest an incision of sufficient dimension to receive the pork loin's respective tenderloin, therefore even the combined references do not disclose the combination of appellant's asserted claims absent applicant's disclosure in which particular attention was paid to the incision required for the instant invention claimed by the appellant.

Appellant is unable to ascertain any motivation for a person having ordinary skill in the art of butchery to combine these disclosures, absent applicants disclosure. The Holbrook patent teaches a hand held sandwich type food item containing an arcuate arrangement of cold cuts and sandwich fixings, with no motivation contained therein to combine the teachings thereof with those of Haig or any of

the other meat roast disclosures cited in these rejections. On Column 2 line 30, Haig suggests that the device may be used to “stuff” a loaf of bread. No reciprocal language may be found in Holbrook regarding meat.

Additionally, appellant asserts that the prior art relating to the combination of the top loin with the tenderloin point decidedly toward secondary conditions of patentability as provided by *Graham v. John Deer*, in that combining the top loin with the tenderloin have been, and continue to be, performed by a variety of complicated, time consuming procedures requiring a great deal of expertise and effort which result in a product having much less visual or dining appeal than that taught by applicants disclosure.

Even using impermissible hindsight, the only way of producing appellants claimed invention involving a solid meat center from any of the analogous prior art disclosures relating to this appeal, would be to insert a lamb tenderloin (from AAPA) into the incised pork loin of Haig. The incision shown in the Haig disclosure is not of sufficient dimension to receive the respective tenderloin thereof. These rejections are error.

Claims 23 and 25 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Haig, in view of Huling and further in view of Giuliano Bugialli's Techniques of Italian Cooking.

Appellant is unable to ascertain any suggestion or motivation for a person having ordinary skill in the art of butchery to combine these references, absent applicant's disclosure with regard to appellants claimed subject matter. The Bugialli disclosure does not show the raw meat item sliced into steaks. The

instructions to slice the roast follow those for cooking it. Upon being cooked, the veal tissues become fixed and firm due to the coagulation of the tissue-based proteins as well as the natural constriction due to the cooking. The Bugialli disclosed rolled roast would not provide acceptable steaks when sliced raw absent the shown binding. The meat products shown by Haig and Huling would not be suitable for slicing and grilling as the viscous filling would become dislodged during cooking, turning and transport, especially when cooked on a grill.

Veal tenderloins have a larger cross section diameter than pork tenderloins and no matter the incision, could not fit, absent trimming, into a pork loin. These rejections are error.

Appellant's disclosure involves the discovery that the tenderloin taken from the short loin of a food animal will fit longitudinally into the respective top loin thereof, if careful steps are taken as shown in appellant's specification.

Appellant's disclosure solves a centuries-old long felt need toward the art of butchery. "Boned and rolled" short loins may be ordered from butcher shops today, and as described in the background section of applicant's disclosure, these roasts contain the boneless top loin, the boneless tenderloin, the "skirt" wrapper and unavoidably contain a large proportion of gristle and fat. The boned and rolled roast is that which is described in the Bugialli instructions as well as that of the Beverly Cox cooking technique book excerpt. These gnarly roasts do not approach the visual appeal of applicants disclosed coaxial roast when cooked and sliced, nor the simplicity of construction, versatility and convenience of use. Applicant requested that Graham considerations be regarded toward the asserted, pertinent claims. The examiner has never responded to that request.

Claims 32-34 have been rejected under 35 U.S.C 103(a) as being unpatentable over Haig in view of Bemis (U.S. Patent number 1,807,189).

These disclosures are non analogous. Beyond that, legally, there must be found within these disclosures, a motivation to combine to produce the claimed subject matter. None is present. . The Haig patent describes a raw food product intended for cooking. The Bemis patent teaches a hand held, ready to eat, sandwich-type food item. The examiner has not established a *prima facie* finding of obviousness toward the combination of these references in that no motivation to combine is present within either of these disclosures toward the other relative to a meat item.

Claims 37-39 and 46 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Haig, in view of Huling, in further view of Bemis.

Appellant insists that the Bemis patent is not analogous to either the Haig or Huling patent with regards to filling a meat item. There is no motivation provided in the above disclosures toward the combination thereof relative to a meat roast, and as such, no *prima facie* finding of obviousness has been established by the examiner. How could the Bemis patent suggest to a butcher that he or she insert sandwich fixings⁴ into the meat item of Haig or Huling?

4. Examiner states on page 7 of the final office action “applicant should replace the limitation ‘means for highlighting’ with ‘green ring’, or ‘layer of lettuce’ if these terms are supported by applicant’s disclosure”. The word “lettuce” appears nowhere in the disclosure and it would appear that the examiner is attempting to seduce the applicant into including language whereby those affected claims would have at least one thing in common with a typical sandwich. The above suggestion would seem highly inconsistent this examiner’s approach to the WDR and new matter statutes.

CONCLUSION

In view of the above remarks, appellant submits that each and every rejection was done so erroneously. Further, appellant is unable to ascertain a single established *prima facie* case toard any rejection. Appellant has nonetheless, argued as though burdened to do so, in response to the various grounds of rejection. Also due to the variety of rejections, appellant will entrust to this honorable board the task of grouping. Appellant does insist that the claims do not stand or fall together, and that those claims that include the tenderloin being disposed within a top loin would be allowable over those independent claims from which they depend. For example if a recipe or instructions existed for stuffing a chicken breast with a length of solid chicken breast meat within the longitudinal interior thereof, this art would neither anticipate nor make obvious the coaxially combined short loin specific, dependent claims.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William Y. Guess", with a stylized flourish at the end.

William Y. Guess

August 5, 2005

VIII. CLAIMS APPENDIX.

Listing of Claims:

Claims 1 through 21 (cancelled)

22. (previously presented) In a food item of the type in which a muscle tissue elongate contains an edible filling disposed along the longitudinal axis thereof characterized in that said edible filling is comprised of an animal tissue elongate having a dominant proportion of water and protein respectively;

whereby a coaxially combined food item is produced which when sliced transversely will reveal a substantially concentric arrangement comprising an outer ring, a center, and a boundary thereinbetween, in which said boundary may or may not be highly visible depending on the visual similarity of the make up of the constituent elongates.

23. (previously presented) The food item of claim 22 in which said food item is sliced into steaks.

24. (previously presented) The food item of claim 22 which further includes a means for highlighting said boundary.

25. (previously presented) The food item of claim 24 in which said food item is sliced into steaks.

26. (previously presented) The food item of claim 22 wherein said muscle tissue elongate is comprised of a top loin.
27. (previously presented) The food item of claim 26 wherein said edible filling is comprised of a length of tenderloin.
28. (previously presented) The food item of claim 27 wherein said muscle tissue elongate is comprised of a length of longissimus dorsi.
29. (previously presented) The food item of claim 28 wherein said edible filling is comprised of a length of psoas major.
30. (previously presented) In a food item of the type in which a tubular perform comprised of a first animal tissue elongate contains an edible filling, characterized in that said edible filling is comprised of a second animal tissue elongate, said second animal tissue elongate having a weight of at least 7 percent of that of said first animal tissue elongate , whereby a coaxially combined food item is produced which when sliced transversely will reveal a substantially concentric arrangement comprising an outer ring, a center, and a boundary thereinbetween, in which said boundary may or may not be highly visible depending on the visual similarity of the make up of the constituent elongates.

31. (previously presented) In a food item of the type in which a first animal tissue elongate encases along the longitudinal axis thereof, an edible filling in which a boundary is disposed thereinbetween, the improvement comprising a means for highlighting the visual appearance of said boundary when said food item is sliced transversely thereacross allowing for the visual inspection thereof thereby.

32. (previously presented) The food item of claim 31 wherein said highlighting means is comprised of edible material of contrasting color to that of said first animal tissue elongate and said edible filling, said edible material being disposed coaxially between said edible filling and said first animal tissue elongate.

33. (previously presented) The food item of claim 32 wherein said edible material is comprised of green vegetable material.

34. (previously presented) The food item of claim 33 wherein said green vegetable material is comprised of leaf type vegetable material.

35. (previously presented) The food item of claim 30 wherein said second animal tissue elongate has a weight of at least 10 percent as that of said first animal tissue elongate.

36. (previously presented) The food item of claim 35 which further includes a means for highlighting said boundary.

37. (previously presented) The food item of claim 36 wherein said highlighting means is comprised of edible material of contrasting color to that of said first animal tissue elongate and that of said second animal tissue elongate, said edible material being coaxially disposed between said first animal tissue elongate and said second animal tissue elongate.

38. (previously presented) The food item of claim 37 wherein said edible material is comprised of green vegetable material.

39. (previously presented) The food item of claim 38 wherein said green vegetable material is comprised of leaf type vegetable material.

40. (previously presented) In a food item of the type in which a first muscle tissue elongate encases at least partially along the longitudinal axis thereof, an edible filling in which a boundary is disposed thereinbetween; characterized in that said edible filling is comprised of a second, non-pork muscle tissue elongate, said second non-pork muscle tissue elongate being of sufficiently small diameter to allow said second muscle tissue elongate to be longitudinally encased by said first muscle tissue elongate.

41. (previously presented) The food item of claim 40 which further includes a means for highlighting the visual appearance of said boundary when said food item is sliced transversely.

42. (previously presented) The food item of claim 41 wherein said first muscle tissue elongate is comprised of a first length of longissimus dorsi

and said second muscle tissue elongate is comprised of a second length of longissimus dorsi.

43. (previously presented) The food item of claim 41 wherein said first muscle tissue elongate is comprised of a first length of psoas major and said second muscle tissue elongate is comprised of a second length of psoas major.

44. (previously presented) In a food item of the type in which a muscle tissue elongate contains an edible filling disposed along the longitudinal axis thereof characterized in that said edible filling is comprised of a non-pork animal tissue elongate, whereby a coaxially combined food item is produced which when sliced transversely will reveal a substantially concentric arrangement comprising an outer ring, a center, and a boundary thereinbetween, in which said boundary may or may not be highly visible depending on the visual similarity of the make up of the constituent elongates.

45. (previously presented) The food item of claim 44 which further includes a means for highlighting said boundary.

46. (previously presented) The food item of claim 45 wherein said highlighting means is comprised of leaf type vegetable material, said leaf type vegetable material being coaxially disposed between said muscle tissue elongate and said non-pork animal tissue elongate.

IX. EVIDENCE APPENDIX N/A

X. RELATED PROCEEDINGS APPENDIX N/A